

E-Mail Request for Emergency Relief

1. Case Number: 04-cv-1199-SLR

2. Check the box that applies:

- ☒ Requesting a teleconference with the parties and the court
☐ Requesting an in-person conference with the parties and the court
☐ Requesting either of the above listed options at the court's determination

3. BRIEFLY describe the reason for this **emergency** request:

On 8/23/06, SRI learned that IBM was acquiring ISS for \$1.3 billion. The acquisition may be completed before trial of this case. While certainly discussions of this deal went on for months, ISS failed to advise SRI or the Court. SRI immediately requested that ISS supplement its discovery by producing all documents exchanged among IBM, ISS, and third parties concerning this litigation, the accused products, and the valuation of ISS's and SRI's technology. This information is directly relevant at least to secondary considerations of non-obviousness. SRI also requested an updated privilege log and that ISS agree to postpone the deposition of its CEO until it produced this discovery. ISS refused all requests. SRI requests ISS be compelled to produce the requested information, that SRI be permitted to subpoena IBM, and that ISS produce its CEO for further deposition.

*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: H. Hawkins, N. Moffitt

5. Response of opposing counsel to this request:

6. Name of local counsel making this request: John F. Horvath

7. Today's Date: 09/08/06

For court use only:

Given ISS's representation that "no documents were exchanged between ISS and IBM concerning this litigation", the timing of this request after the close of discovery, and the attenuated relevance of such information even if it did exist, SRI's request for further discovery related to IBM's acquisition of ISS is denied.

Opposing Counsel's Response to E-Mail Request for Emergency Relief

1. Case Number: 04-cv-1199-SLR

2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

SRI should not be permitted to reopen discovery 7 weeks before trial. The announced acquisition of ISS by IBM has no relevance to the issues to be tried. Moreover, the parties expressly agreed that ISS has no obligation to produce documents created on or after June 23, 2005. In any event, no documents were exchanged between ISS and IBM concerning this litigation. ISS's CEO, Tom Noonan, sat for a full deposition on August 31 and answered any and all questions directed to him relating to the announced acquisition. There is no basis for SRI to depose him a second time.

*Any text added to beyond the limits of this space will be disregarded by the court.

3. Name of local counsel submitting this response: Richard L. Horwitz

4. Today's Date: September 11, 2006
